IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

KANAWHA INSTITUTE FOR SOCIAL RESEARCH & ACTION, INC.

Plaintiff,

v. **Civil Action No.** 2:17-cv-01963

GREEN SPIRIT FARMS, LLC,

Defendant.

COMPLAINT

NOW COMES Plaintiff Kanawha Institute for Social Research & Action, Inc., by counsel, and files this Complaint against Green Spirit Farms, LLC making claims for breach of contract and conversion in violation of West Virginia law, stating as follows:

PARTIES

1. Plaintiff Kanawha Institute for Social Research & Action, Inc. ("KISRA") is a non-profit corporation organized under the laws of the State of West Virginia, with a principal office in Dunbar, Kanawha County, West Virginia.

2. Defendant Green Spirit Farms, LLC ("GSF") is a for-profit limited liability company, organized under the laws of the State of Illinois, and authorized to transact business in the State of Michigan. Defendant GSF has a principal office at 18300 U.S. Highway 12, New Buffalo, Michigan 49117.

JURISDICTION AND VENUE

3. Plaintiff asserts claims herein for breach of contract and conversion under West Virginia law.

4. Plaintiff is a citizen of West Virginia.

5. For the purposes of diversity jurisdiction pursuant to 28 U.S.C. §1332, Defendant GSF is a citizen of the States of Illinois and Michigan.

6. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs, and is between citizens of different states.

7. The contract at issue was negotiated and entered into in Kanawha County, West Virginia, and was to be performed in Kanawha County, West Virginia.

8. Venue is appropriate in the U.S. District Court for the Southern District of West Virginia pursuant to 28 U.S.C. § 1391(b) because all, or a substantial part, of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

FACTS

9. Plaintiff KISRA is a faith-based organization which works to strengthen families through a community health center, health support services, and a variety of programs in connection with employment, financial counseling, and child education.

10. In 2014, Plaintiff KISRA's Chief Executive Officer was Michelle Foster.

11. Defendant GSF operates at least two indoor vertical farms, and sells its "Vertical Growing System" and services to customers wishing to develop their own vertical farms.

12. Milan Kluko is the President and a principal owner of Defendant GSF.

13. In 2014, Plaintiff KISRA decided to develop a "vertical farm" in a KISRA-leased building in Charleston, West Virginia using a "vertical growing system" provided by Defendant GSF.

14. Pursuant to a Memorandum Agreement dated December 22, 2014, Plaintiff KISRA and Defendant GSF entered into a contract which provided that "Green Spirit Farms (GSF) and KISRA have agreed to develop an initial Vertical Farm using [GSF's] Vertical Growing System." (A true and correct copy of the Memorandum Agreement is attached as Exhibit "1" to this Complaint and incorporated into this Complaint.)

15. As noted in the Memorandum Agreement (Exhibit "1"), on December 19, 2014, Plaintiff KISRA provided an initial payment to Defendant GSF in the amount of $130,680.00 "representing 50% of the cost for the lighting for the" Multiple Vertical Growing Systems. (A true and correct copy of the Purchase Order from Defendant GSF for the payment and the "Payment Record" for the payment by Plaintiff KISRA are attached as Exhibit "2" and are incorporated into this Complaint.)

16. On January 14, 2016, Plaintiff KISRA made an additional payment to Defendant GSF in the amount of $92,150.00 for the cost for the lighting for the Multiple Vertical Growing Systems. (A true and correct copy of the Invoice from Defendant GSF for the payment and the "Payment Record" for the payment by Plaintiff KISRA are attached as Exhibit "3" and are incorporated into this Complaint.)

17. Despite payments by Plaintiff KISRA to Defendant GSF totaling $222,830.00, no Multiple Vertical Growing Systems were delivered to KISRA and Defendant GSF provided no services in connection with the development of the vertical farm.

18. On February 19, 2016, Plaintiff KISRA's Chief Operating Officer, Carl Chadband, emailed Defendant GSF's President, Milan Kluko, and requested that Defendant GSF cancel the contract for the vertical farm and return the monies paid by Plaintiff KISRA to

Defendant GSF. (A true and correct copy of the email chain between Mr. Chadband and Mr. Kluko is attached as Exhibit "4" to this Complaint.")

19. On February 22, 2016, Mr. Kluko sent an email to Mr. Chadband responding to Mr. Chadband's February 19, 2016 email requesting cancellation of the contract and return of the funds paid by Plaintiff KISRA. In his responding email, Mr. Kluko stated that Defendant GSF had "cancelled work orders for [KISRA's] lighting and will refund the cost for the lighting" and that Defendant GSF "should have this accomplished in approximately 2 weeks from today." (See the email chain between Mr. Chadband and Mr. Kluko attached as Exhibit "4" to this Complaint.")

20. Despite the representations by Mr. Kluko, Defendant GSF did not refund the payments to Plaintiff KISRA as Mr. Kluko promised.

21. On March 11, 2016, Mr. Chadband emailed Mr. Kluko and stated – "Can you provide me with a status update for our refund. It has been two weeks." (See the email chain between Mr. Chadband and Mr. Kluko attached as Exhibit "4" to this Complaint.")

22. Mr. Kluko responded to Mr. Chadband's email the same day with an email stating – "We hope to have this wrapped next week the process has taken a little longer than we had hoped and my apologies…we have all the items together and RMA to get the funds I will get back with you COB Tuesday." (See the email chain between Mr. Chadband and Mr. Kluko attached as Exhibit "4" to this Complaint.")

23. Despite the demand by Plaintiff KISRA for cancellation of the contract and a refund of the payments, Defendant GSF has performed no services under the contract, has not provided the Multiple Vertical Growing Systems for which Plaintiff KISRA paid $222,830.00, and has not refunded any of the payments.

COUNT I: CLAIM FOR BREACH OF CONTRACT

24. Plaintiff incorporates by reference Paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Plaintiff KISRA and Defendant GSF entered into an enforceable contract pursuant to which Defendant GSF was to provide services and Multiple Vertical Growing Systems to Plaintiff KISRA in connection with the development of a vertical farm.

26. Plaintiff KISRA made payments to Defendant GSF totaling $222,830.00 in consideration of Defendant GSF providing the services and the Multiple Vertical Growing Systems.

27. Defendant GSF has not provided the services and Multiple Vertical Growing Systems to Plaintiff KISRA.

28. Despite demands for a refund of the payments, and Defendant GSF's representations that a refund would be forthcoming, Defendant GSF has not refunded the payments by Plaintiff KISRA.

29. Defendant GSF has breached the contract between Plaintiff KISRA and Defendant GSF.

30. As a result of the Defendant GSF's breach of the contract, Plaintiff KISRA has suffered damages, including the loss of the payments totaling $222,830.00, and consequential damages.

COUNT II: CLAIM FOR CONVERSION

31. Plaintiff incorporates by reference Paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. Despite demand by Plaintiff KISRA for a refund of the payments to Defendant GSF, and Defendant GSF's agreement to refund the payments, Defendant GSF has wrongfully retained and exercised dominion over the property of Plaintiff KISRA, and thereby denied Plaintiff KISRA the full enjoyment and benefits of its property.

33. Defendant GSF's unauthorized retention of Plaintiff KISRA's funds constitutes an unlawful conversion of Plaintiff KISRA's property.

34. Defendant GSF's conduct has been in bad faith, vexatious, and wanton.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff KISRA prays for the following relief:

(a) That it may have a trial by jury;

(b) That it may recover the payments made to Defendant, with interest;

(c) That it may recover the actual damages resulting from Defendant's breach of contract;

(d) That it may recover consequential damages resulting from Defendant's breach of contract;

(e) That it be awarded punitive damages;

(f) That it may recover its attorneys' fees and costs;

(g) That it be awarded all damages provided by law and all remedies provided by equity; and

(h) That it be awarded such other relief as this Court may deem just and equitable.

KANAWHA INSTITUTE FOR SOCIAL RESEARCH & ACTION, INC.

By Counsel

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